EXHIBIT 8

IN THE UNITED STATES BANKRUPTCY COURT

IN AND FOR THE DISTRICT OF DELAWARE

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W.R. GRACE & CO., et al., Debtors	:	CHAPTER 11
	:	Case No. 01-01139 (JJF)
	:	Jointly Administered

- - -

Wilmington, Delaware
Thursday, May 3, 2001
8:00 o'clock, a.m.

- - -

BEFORE: HONORABLE JOSEPH J. FARNAN, JR., U.S.D.C.J.

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APPEARANCES:

PACHULSKI, STANG, ZIEHL, YOUNG & JONES
BY: LAURA DAVIS JONES, ESQ.

-and-

KIRKLAND & ELLIS
BY: JAMES H.M. SPRAYREGEN, ESQ.,
DAVID BERNICK, ESQ.
JAMES W. KAPP, III, ESQ.,
SAMUEL A. SCHWARTZ, ESQ.
(Chicago, Illinois)

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FRANK PERCH, ESQ.
OFFICE OF THE UNITED STATES TRUSTEE

Counsel for the United States Trustee

Valerie J. Gunning
Official Court Reporter

APPEARANCES (Continued):

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BY: MATTHEW ZALESKI, ESQ.

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CAPLIN & DRYSDALE
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Counsel for National Medical Care

ELZUFON, AUSTIN, READO, TARLOV & JMONDELL
BY: WILLIAM D. SULLIVAN, ESQ.

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BY: MARK CHEHI, ESQ.

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APPEARANCES (Continued):

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Counsel for Maryland Casualty

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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at 8:00 a.m.)

THE COURT: All right. Be seated, please.

Good morning.

MR. SPRAYREGEN: Good morning. James Sprayregen on behalf of the debtors. I assume your Honor has received a copy of the agenda.

THE COURT: I have.

MR. SPRAYREGEN: Your Honor, with respect to Items 1 through 5, there were no objections. We filed a

certificate of no objection and we propose to submit orders to the Court.

THE COURT: We'll enter those orders.

MR. SPRAYREGEN: With one exception, your Honor. There was a -- with respect to Item 3, I apologize, there was an agreement with the Creditors Committee to continue that matter for further discussion, so we won't be submitting an order on that one yet. We may ask for a hearing on that if we can't resolve it, whatever the next omnibus date is, which we don't have yet.

THE COURT: So Item 3 will be continued by agreement. The others are unobjected to and will be entered.

MR. SPRAYREGEN: Thank you, your Honor.

Your Honor, with respect to Items 6 -- excuse me -- with respect to Item 6, that was the ordinary course professional motion. I understand, although I have not seen it, that the U.S. Trustee, an objection that was filed recently, or I'm not sure if it was a letter objection. I'm not sure if the U.S. Trustee is here.

Ms. Jones is here.

(Pause while counsel confer.)

MR. SPRAYREGEN: Apparently, he's stuck in traffic. Maybe we can pass that.

THE COURT: All right.

MR. SPRAYREGEN: Your Honor, Item 7 is the interim compensation procedures motion. There were a few comments from the Creditors Committee. We reached agreement and we propose to submit an order on Item 7.

THE COURT: All right. We'll execute that.

MR. SPRAYREGEN: Your Honor, with respect to Item 8, deeming utilities adequately assured of future performance and establishing procedure for determining adequate assurances, there were a couple of comments we received from the Creditors Committee and a couple of utilities. We worked out all of those objections. We intend to propose an order which details the resolution of those.

THE COURT: All right. We'll enter that order.

MR. SPRAYREGEN: That brings us to Item 9, the preliminary injunction motion. Mr. Bernick from Kirkland & Ellis will address that.

THE COURT: All right.

MR. BERNICK: Is your Honor's practice to hear the motion first or hear the objection?

THE COURT: Have you been informed as to the allocation of time?

MR. BERNICK: Yes. We, at the present time, will not use our allocation. We maybe have 15 minutes at the most.

THE COURT: Typically, in a bankruptcy

application, I would hear the objections first, but since this is a motion for a preliminary objection, I'm going to hear the applicant first.

MR. BERNICK: Okay. I believe, your Honor, that we're down to a small number of issues. We have the objection as to the -- the Abner plaintiffs. Excuse me.

I'm sorry, your Honor. The Abner case is the case that's pending in California that involves the fraudulent conveyance claim. And I think that the only issue there is whether we're going to have collateral litigation in California concerning the fraudulent conveyance claim.

The fraudulent conveyance claim is barred, we believe, in California, on four different grounds.

First, we have Section 360(a)(1), and 360 (a)(1) concerns -- I'm sorry. 360(a)(1) would protect and stay against claims that involve the -- a claim against the debtor. Under Colonial Realty, that would be the first ground for staying the California case. 368(3) is alternative grounds for the stay, and 368(3) would also kick in because we're talking about a claim that belongs to the estate, and that would bring in the Mortgage America case.

Then we have Section 105, because there are indemnity claims that are implicated here. And the indemnity

claims would indicate the Robinson decision, which has been adopted in the McCarney case.

We have Cybergenics. Under Cybergenics, the Court would look to see if there's the authority that's vested in the -- in the California plaintiffs to pursue the fraudulent conveyance claim.

So this is a situation where the claim really has four different -- there are four different problems that are involved, whether you look at the state powers of the Court or the preliminary injunction powers of the Court.

The issue today is whether not what actually happens to that claim once it comes to rest. The issue today is whether there should be the California collateral litigation at all. And all that's before the Court today is the pendency of the California case.

THE COURT: In that regard, the Abner attorneys tell us in their papers that under bankruptcy law generally and in the Third Circuit, the Court may authorize an individual creditor or an official Committee to pursue a fraudulent transfer claim where the cause of action has merit and the debtors have refused to prosecute the action. And that's in the context of their opening statement, that although the debtors claim that the fraudulent transfer claim belongs to the debtors, the law in the Third Circuit is clear that a fraudulent transfer claim belongs to the creditors.

MR. BERNICK: Yes. That's the Cybergenics decision.

THE COURT: Right.

MR. BERNICK: I think that we're going to get to the question ultimately of how that claim should be pursued, if it should be pursued.

THE COURT: How much time are you going to take to get to that, to focus on that and provide some sort of position?

MR. BERNICK: We can do that really -- I think, in fact, the Bodily Injury Committee suggests 30 days. I don't think we have a problem with that. It's a fairly straightforward issue about the position that we're going to take with regard to the prosecution of that claim. And so 30 days would be sufficient for us to inform the Court as to what their position would be.

But the only matter we're really addressing here today is whether it ought to be done in California, and our position with regard to California is it should not happen in California. That claim should be addressed, to the extent it is addressed, here. So 30 days --

THE COURT: And I understand your position from the papers. And your time frame is you can do that in 30 days?

MR. BERNICK: That's correct.

THE COURT: You agree with the Property Committee?

MR. BERNICK: We agree with the Property Committee. I think it's actually the Bodily Injury Committee that has taken the position it ought to be 30 days, at least with regard to the decision. I think that the Bodily Injury Committee has a position that pertains to really all aspects of the injunction. They are saying they want to continue it for 30 days. We don't agree with that. But as to what should actually take place in connection with the fraudulent conveyance claim, we believe we'd be prepared to address that in 30 days.

THE COURT: So if you were to prevail and have the injunction entered and it had a time expiration of 30 days, you would not be back in asking for any additional time on the issues that pretty much coat the -- the objections or opposition?

MR. BERNICK: We wouldn't need any more time to address the question of what should happen to the claim, that's correct. But what we're asking for today, and what we would seek not to revisit 30 days from now, is the question of whether the claim should be -- should proceed here or elsewhere. That is that we believe that it should proceed here. The question of are we going to pursue the claim and what should be the timing of the pursuit of the

claim, those are matters that we would seek to take up 30 days from now.

But we'd like the Court to enter the stay of the California case as a stay that would be pendent throughout the -- throughout these proceedings.

In other words, we would like not to revisit the question of are we going to be traveling out to California to pursue that claim. If the claim is going to be pursued, it ought to be pursued here. And then the question is: Who pursues it here, and on what basis it's pursued, the timing for the pursuit of that claim.

Those are the matters that we would be prepared to and would ask to take up 30 days from now.

THE COURT: And in your mind, is there really any question, given what the pleadings were in the California action, that you're going to come to the conclusion not to pursue the claim?

MR. BERNICK: I think that insofar as Grace is concerned, the debtor is concerned, given the positions that we've taken, Grace, through its current counsel, would probably be disabled from pursuing the claim. However, there may be other ways in which -- we're very concerned that this claim not become something that is a distraction from the mainstream of this case.

Our case is -- has a whole lot of other issues to

be taking up that are important issues. And based upon other experience, we're a little bit worried that this kind of claim becomes, in a sense, what everyone starts to focus on in the case as opposed to the matters that we really came here to resolve, which are the liability matters.

From that point of view, it may be that, candidly, one of the options is that Grace would retain new counsel, special counsel, a special examiner type of counsel who is independent of Grace and its existing counsel, paid for by the debtor, but independent of the debtor, for purposes of assessing and determining whether to pursue fraudulent conveyance claim. That might be preferable. There would be greater independence.

The claim is really being pursued in a fiduciary capacity that is on behalf of all the creditors. That might be a better course than to have, for example, one of the creditors be in control of the claim, which is essentially what the California plaintiffs asked for. They asked to be in control of the claim.

There are others who may want to be in control of the claim. There are a variety of cases that have been brought, all of which make the fraudulent conveyance claim.

So rather than confer it upon one creditor or, for that matter, one of the Committees of creditors, maybe it makes more sense to have the claim pursued by somebody who

whose sole job it is, accountable to the Court as the fiduciary, to determine whether that claim should be pursued. That way there's more independence, there's more accountability to the Court. It does not become a tool or a lever in the hands of one creditor or one Creditors Committee to pursue. Those are the kinds of things that we want to think about and be able to report to the Court.

There are cases that, indeed, talk about the fact that the authority, the Cybergenics analysis as an analysis says that the authority to pursue the claim is an authority, really is conferred on the approval of the Court. It's an authority that's a fiduciary one that's supposed to benefit everybody who was involved in the case.

So there's an element of Court approval and Court, really, supervision, ultimately, of how that claim is pursued. That's why the leave has to be sought or approval has to be sought by whomever it is that wants to pursue that claim.

So we take that seriously. We say, Well, if there's going to be Court approval and it's really a fiduciary claim that's being brought, why not have it be brought by somebody who's under the direct Court supervision, not accountable to the rest of the Committee or to other creditors, but to the Court directly, and independently of all the parties to the case, to really see if the claim is a

worthwhile claim.

Obviously, our position has been historically that it's not a meritorious claim, and that's why we recognize that, ultimately, we'll probably be disabled from pursuing it. At the same time, it does not seem to us to make sense to have the claim then kind of get tossed up and whatever creditor gets it or whatever Committee gets it, that's how it proceeds.

So those are the alternatives that we're considering.

THE COURT: All right.

MR. BERNICK: And sorry to be a little bit confused at the outset here. I misplaced an important part of my notes here. I apologize, your Honor.

I don't know if there are any questions that your Honor has, other questions with regard to the Abner case.

THE COURT: I may have some on Price.

MR. BERNICK: Okay. Do you want to talk about Price next?

THE COURT: Sure.

MR. BERNICK: Okay. With regard to Price, there was an emergency motion with respect to Price. Obviously, it's our position that there really is no emergency here.

The Price case is an MDL pending in Boston. Nothing has happened with regard to that case beyond the

entry of case management order and the briefs that have been filed in connection with class certification. There's no class certification ordered. The CMO calls out a whole series of activities that would take them until July of next year. And so there's no mature trial imminent case that's out there, which are the classic parameters of when you would lift the stay.

More particularly, and there's a suggestion in the papers that there's some other element of emergency, that there's a need for warnings to go out or information to go out or to protect the interests of the people in the Price case.

That issue, that is, is there some kind of emergency with respect to notification, already was litigated in connection with the Barbanti class action in Washington State.

Your Honor may recall or may not recall, the Barbanti case has been certified as a statewide class in Washington State, and there was a preliminary injunction request, I believe, or request for emergency relief, to notify people of the hazards of Zonolite. There was a contested here -- evidentiary matters were presented to the Court, and the Court there said that there was no need for any kind of interim or preliminary notification. So there's no element of emergency whatsoever with respect to Price,

none.

Price, in addition, presents a very fundamental issue to this case, and, frankly, it's a -- we regard the motion as something of an extreme motion. The whole purpose of a mass tort bankruptcy in the first instance is to bring all of the claims before one Court, all of the claims before one Court, so they can be consolidated and dealt with on a centralized basis. That's just basic mass tort bankruptcy. That goes back to the Manville case.

That whole issue, that the Court have the power to bring into one location all of the cases for centralized proceedings, was extensively litigated in connection with the Robbins case, because in Robbins, there are cases all over the country. Judge Merage (phonetic), the trial judge there, had them all transferred to the, I think it's the Eastern District of Virginia. It was his courtroom in Richmond for a consolidated proceeding. That went up to the Fourth Circuit and was affirmed.

There was extensive discussion I know that your Honor is familiar with about all the different grounds for corralling all the cases in one location. That's the case, that's the decision that went forward and talked about the stay powers of the Court, the injunction powers of the Court, and the importance of all those different powers to bring to bear in one Court all the cases that were pending

elsewhere.

Again, centralization was the essence of what the first part of the bankruptcy was all about.

And then we litigated the issue again in connection with Dow-Corning. There was extensive litigation, including involving the very firms that are involved in the Price motion, in the case that's pending in Boston. And, again, the Court, it went up and down to the Sixth Circuit on two different occasions.

The Court was unequivocal in saying centralization is the principal function that we have to be acquitting here. Centralization is key. What the Price request is all about is to say that even as to the matters that are central to this Chapter 11, even as to those matters, we're now going to have collateral litigation that's pending in other courts to take up issues or discovery or other matters of that nature. They're saying, Well, let the Court in Boston consider class certification.

THE COURT: I thought you really thought what it was all about was who was going to be running that litigation for the plaintiff.

MR. BERNICK: That is the more -- we believe that's also true, but I was -- that's kind of a more political analysis. We think that is also true.

THE COURT: Okay. You put a line about it in

your papers.

If that's what it's really all about, what is the harm to the estate to let that all occur up there, let them fight out who's going to lead the case and then bring them down here? I mean, what interest do you have in who, you know, gets the benefit of a decision about being plaintiffs' lead counsel or co-lead counsel or whatever?

MR. BERNICK: I'm sorry. If the only question is who gets to represent the different creditors in connection with the litigation that takes place here over what happens to the Zonolite claim, that is a matter in which the debtor does not have a particularly active interest.

THE COURT: May it actually be more efficient to let that all preliminary kind of stuff take place up there?

MR. BERNICK: I think if all that we're going to do is to take that aspect of what's pending in Boston and import it here, I believe it has already been done in the sense that they already have their own Committee.

Now, I don't know whether the other folks, for example, the people who have the Barbanti class in Washington, are comfortable with that or whether, for that matter, whether the body injury -- I'm sorry -- Property Damage Committee itself is comfortable with that.

But if the only question is who is it that

participates in this proceeding --

THE COURT: It's not the only question. There are some other preliminary questions that they tag on.

MR. BERNICK: They want to take on class certification and discovery, which we feel very, very strongly --

THE COURT: Right. Put discovery out. Call that more than preliminary. The other kinds of things they're talking about, what prejudice would be suffered if the case eventually came here, in a combined form?

MR. BERNICK: No prejudice, except I struggle with what it is that they've asked for that is only that. That is, what they specifically ask for in their papers is class certification and discovery. And class certification is far more than who it is that represents those people. That is, the whole substantive body of law and procedural body of law that we think is fundamentally not the right way to go and inconsistent with what we're here for.

Class certification --

THE COURT: So your answer is it's inconsistent with the purposes of the filing?

MR. BERNICK: Absolutely. Let me just, again, just put it all on the table.

Class certification, A, creates a lot of issues. You know, is it a B(2) class, really, or is it a B(3) class?

It creates issues about what's the nature of the relief and how is the case going to be tried. It's a whole process for actually litigating the merits of the claim.

We're here in bankruptcy. There are separate bankruptcy procedures that are involved in determining whether a claim is going to be allowed or disallowed and there's a process called the bar date process. The bar date process, a date set, and people have to come in to say I've got a claim that I want to have pursued. It's a completely different type of procedure.

This is not a case, your Honor, in which there are thousands of individual suits that are pending all over the country. This is a case where there are a small number of suits and they're all class actions. And essentially what they would do is to create a huge body of claims by virtue of the certification. The certification would be the creation of the litigation in the first instance.

We don't think that there's any reason to do that. We think, in point of fact, that's exactly what we want to avoid here. What we want to have take place here, let's find out the people, the individuals, who really want this kind of relief to be begin with and let's do it according to procedures that are used in bankruptcy, which are the bar date procedures.

So you set a bar date, people lodge their claims

coming before the Court. At that point in time, if the people who are currently representing the folks in the Boston case are appointed, or, for that matter, we carry it over, and they represent that group of claimants, we would have no quarrel with that at all.

Our issue is not -- our issue is not the particular individuals who are involved in the Boston case. Our issue is the procedure that would be applied to addressing the issues that are raised in Addafill (phonetic).

One of the principal reasons why we filed this Chapter 11, and we wrote this in our brief to the Court, was to address the Addafill case, and was to do it in ways that were consistent and was done in accordance with the rules of the bankruptcy process.

What they want to do essentially is to take what is a mainstream issue in the bankruptcy and say, Well, let's treat it the non-bankruptcy class action way, and then bring it back into the bankruptcy. And it just does violence to the whole idea of why we're here.

Again, we're not concerned about the political situation. That is, however they resolve who's going to leave is their business. We don't choose their lawyers. But we're very concerned about the substance that seems to attach to that. And that's why, if the Committees agree and those people come in and, you know, they're the representatives,

that's fine. But class action, we would be very, very much against any kind of class action procedure taking place there, in part because Judge Zaras, no matter how good she is, she's not the bankruptcy judge and she's not sitting in bankruptcy and she's going to apply Rule 23 and look at this as basically a piece of civil litigation. We just can't have that. That's just something that would be very much inconsistent with why it is that we're here.

So we feel very, very strongly about this issue. It's not an emergency matter, but we feel very, very strongly about the substance of this matter.

THE COURT: All right.

MR. BERNICK: Have I been responsive to the Court?

THE COURT: Yes.

MR. BERNICK: Okay. The only other issues are scope issues. And the scope issues I think have been addressed in our papers.

Let me touch on, I think there are three small issues on the scope. And if your Honor notes, we have submitted a new proposed order to the Court in light of the scope issues.

Number one, the Property Damage Committee. If your Honor does not have it handy --

THE COURT: No, I do. I have it to my left

here. Go ahead.

MR. BERNICK: I've actually got a highlighted copy here, your Honor (handing document to the Court).

THE COURT: Oh, if you have a highlighted copy.

(Pause.)

MR. BERNICK: If you take a look at the highlighted portions, you'll see that there have been a couple changes. The order that your Honor entered that basically took us from day -- from the -- from the order that was entered on the first day until this hearing partially granted the relief that we requested on the first day. And what we've done is to ask for the full relief of what we asked for on the first day in certain areas less -- just changed a little bit.

The first change is that if you go down to Paragraph 9, it says, "The actions includes," and it ought to be, "Action include, any case filed or pending."

The first day order also would cover cases that haven't yet been filed, future claims. So that's a change.

And that was done really at the suggestion of the Property Damage Committee. The Property Damage Committee said why do we want to enjoin cases that have not yet been filed, and we acceded to that. We were very skeptical and remain very skeptical that that is going to be the end of the matter because these cases kind of flow like a stream a

little bit, and if you dam it up at one part, they tend to come through on another.

We expressed the concern if we don't put in futures, all that will happen, they'll file new cases against new entities or new cases against the same old entities. And the most prominent example of this is with respect to Sealed Air.

Remember, Sealed Air is a company with whom the Grace Companies did a transaction in 1998. That was a spinoff transaction. The Sealed Air, that's the 1996 spinoff transaction. Those two companies are not debtors in this case. However, there are indemnity claims that they have with respect to any claims that are brought against them and before this bankruptcy was filed, a whole series of claims were brought against Sealed Air.

As the order presently stands the way that we've worded it, the only thing that's enjoined are those claims that actually have been filed against Sealed Air, actually filed against Sealed Air.

We're concerned that if we don't say future or may be filed, or yet to be commenced, that all of that will mean is that new people will file claims. And notwithstanding that concern, we've been conservative and said simply filed or pending. Mayor we're wrong about that. Maybe it ought to be broader so that we don't have to come

back here. Maybe the Sealed Air people will have something to say about it.

But our approach here has been very conservative. We're leery of it, but we don't want to ask the Court for more than what we have to today. That's why we styled it the way we did. So that's a change.

Number two, if you go down to Sub C under 9, entities alleging fraudulent transfer, fraudulent conveyance claims, those were denied. That relief was denied the first day. Judge Newsome said that he was not familiar with the fraudulent conveyance claims, didn't know enough to really deal with them. I think there was a problem in how the papers were conveyed to the Court.

But, clearly, we feel that that is warranted in this case. We've set it forth in our papers, and the only opposition to that comes from the Abner claimants in California. But we've added that.

And then we've added the insurance carriers, because there are direct actions that have now been brought against two carriers, Maryland Casualty and Continental Casualty down in Louisiana.

Louisiana has a direct action statute. Those insurance companies are insurance companies that have already reached agreements to provide coverage to Grace, and because of that, there are now settlement agreements with them that

leave us in the position of indemnifying them.

So all that those direct actions do is to go after us, essentially, standing in the shoes of the insurance carrier who's got the indemnity. There's no more money to be had there. We've already gotten the money. All it does is implicate our indemnity obligation. We want to bring that to a standstill.

Finally, if you put your eye up to No. 7, Merrill Lynch, CFSB, Insurance Carriers and Robinson, we've added in Merrill Lynch, CFSB. Those are two additional defendants in the Abner case that we originally omitted to add. The insurance carriers that picks up again, that same point that we've made below. And then Robinson. Robinson is an installer and licensee of Grace, been sued in Montana, and we have an indemnity that goes to Robinson, so that we've added them back in.

So we have narrowed the scope of the request to make it non-future, and we've picked up some other parties, and we've picked up a couple other claims. And in that respect, we have refined the scope of the injunction. We're comfortable with that.

I have to alert the Court that there may be some cats and dogs out there. Maybe a couple more cases that are pending. Probably not even asbestos cases, where Grace has got indemnity obligations. We would hope we can reach

agreement with the other constituencies to include those in at the appropriate point in time. But we'll let you know if -- let the Court know if there are problems that way. But those are the refinements that have taken place.

THE COURT: All right. Thank you.

MR. RASKIN: Your Honor, would you like to hear from other people in support of the --

THE COURT: Yes. There's about five minutes left, if you want to take that up as opposed to reserve it for rebuttal. That's fine.

MR. RASKIN: Thank you, your Honor. I will be brief.

Robert Raskin of Stroock & Stroock & Lavan an on behalf of the Official Creditors Committee.

I just wanted to rise to question some of the things that were just said by debtors' counsel. We do support the injunction and we do support the full scope of the injunction that was originally asked for. We are not trying to bar any claims. There will be a bar date. Claims will be brought.

It seems to us to be a mistake to leave a hole open for people to flood claims through, although the debtor has already reserved the right to come back. It seems like if we're going to grant an injunction, it should be one that accomplishes its goals and states the litigation.

What we do feel stronger about, your Honor, is the response to the questions regarding fraudulent transfer claims coming back in 30 days and the suggestion how those will be brought and who will bring those.

Your Honor, this is a bankruptcy case. It's a serious bankruptcy case. It's a complicated bankruptcy case. There is no bar date as of yet, so we don't know what the claims are likely to be.

The case just started. We don't know what the value of the company is going to be, so we don't know whether it will be necessary to bring fraudulent transfer claims or not.

I suggest that, as most things in bankruptcy, things tend to work out, hopefully, in a consensual matter. To come back to this Court in 30 days and say, this Committee, that Committee or this person should bring these fraudulent transfer claims means one and only one thing: That is the fraudulent transfer claims will be brought and there will be litigation now.

We think that's a mistake. The debtor should be given an opportunity along with the Creditors Committee to try to work out the issues in this case, whether the company is solvent, whether it can satisfy all the claims. And if not, perhaps litigation does have to be brought and the fraudulent transfer claims would be brought.

What our Committee does not want to see happen is those fraudulent transfer claims be brought before we know what this case is ultimately going to be about in terms of what can happen in a plan of reorganization. We would be severely prejudiced if those claims were brought right now and a finding were made that the company were insolvent in 1996 -- excuse me -- solvent in 1996 or 1998 and those assets would not be brought back into the estate whereas we find ourselves now in an insolvent position.

I don't know whether those are the facts, but I do know it's going to take some time for people to understand these cases and a lot more than 30 days for people to understand these cases, the values that are here, the claims that are around in order to know whether those claims should be brought or whether they can be consensually resolved in a plan of reorganization, where the potential defendants contribute to the assets of the estate, if necessary.

Those negotiations should have -- should happen in the context of this bankruptcy and not -- not litigation prematurely brought before we have an opportunity to see if those negotiations can take place.

Lastly, your Honor, some mention was made of having a third party coming into these cases as another fiduciary to perhaps bring those claims.

At this point, as we said, we don't want the

claims brought, but we certainly don't want another fiduciary adding another level of expenses in these cases. The debtors are a fiduciary. There are three Official Committees, all of who are fiduciaries, so I suggest to this Court that among us, if the claims have to be brought, and we don't want them brought now, that there are enough parties in interest in this case with enough interests to bring those claims if and when they should be brought.

Thank you, your Honor.

THE COURT: Thank you.

MR. CHEHI: Good morning, your Honor. Mark Chehi of Skadden Arps on behalf of Sealed Air Corporation. I'd like to move the admission of my partner from New York, Burt Wolff, who would like to address the Court.

Sealed Air is a major creditor in the case, your Honor, a major member of the Creditors Committee.

THE COURT: All right. Thank you. I will grant the application. Thank you.

MR. WOLFF: Good morning, your Honor. Burt Wolff, Skadden Arps, Slate, Meagher & Flom of New York for Sealed Air Corporation.

Judge, the preliminary injunction order that is before the Court addresses essentially two classes of cases. The first are the fraudulent transfer matters and the second can generally be swept under the rubric of product liability,

personal injury, property damage cases arriving -- arising from alleged exposure to Grace's asbestos-containing products.

Your Honor, it is essential that the stay gets extended to future cases. The TRO that Judge Newsome issued on April 2nd, which was subsequently extended by order of this Court, covered not only pending actions, but also actions that had not yet been filed or were not pending as of the date of the order.

Until the submission of Grace's reply papers two days ago, it had consistently been Grace's position that the preliminary injunction should extend to future cases.

Since the time Grace filed this matter and the TRO was issued on April 2nd, Sealed Air has been served with 20 new asbestos personal injury cases arising out of alleged exposure to Grace's asbestos-containing products. Those 20 new cases are above and beyond the 30 cases that are addressed in the affidavit of Katherine White, and I have a list of those cases for the Court and counsel (handing document to the Court).

Based on my conversation with a plaintiff's asbestos lawyer, it is reasonable, and I -- maybe I'm understating this, to expect an avalanche of hundreds, if not thousands, of new cases to be filed if the preliminary injunction does not extend to future cases.

Now, one of the key issues that concern all of us is that of judicial economy. If the preliminary injunction does not extend to future cases, then, given a 20-day period within which to answer or move, it seems likely that at least every two weeks we are going to be back before this Court, asking first for a TRO, and then later for a preliminary injunction with respect to these claims, even though none of the underlying facts or circumstances will have changed.

That is an unnecessary waste of judicial resources and cost to the parties insofar as Sealed Air's attorneys' fees are concerned with respect to those matters.

We have a claim for indemnity against Grace for our fees.

It is in the compelling interest of judicial economy to resolve this matter one time only, and that time is now. We, therefore, urge the Court to issue the preliminary injunction as it was initially requested to cover future as well as current actions, whether fraudulent transfer, and I understand that those fraudulent transfer claims involve complex and weighty issues as well as for the product liability-type claims.

Does the Court have any questions?

THE COURT: No. Thank you.

MR. WOLFF: Thank you, your Honor.

THE COURT: Thank you.

All right. The proponents have used their time. We'll move to those in opposition.

MR. LeCLAIR: Lew LeClair on behalf of the Abner plaintiffs.

Our position is that the motion of the debtor is premature at this point. We are in agreement with the Committees, at least the two Committees, the Bodily Injury and Property Damage Committee, that there can be a stay for 30 days to enable them to determine where, when and how the claim should proceed, the fraudulent transfer claim. We just want to be sure that we preserve all of the options.

I think the debtors' motion seeks to terminate the action in California before the Committees have an opportunity to determine procedurally where and how they want to move forward and to ask the Court for whatever permission they want to ask the Court. Ultimately, we have not sought leave yet to proceed on behalf of the Abner plaintiffs because we want to cooperate with the Official Committees and determine where they want to go and how they want to go.

So our position is ultimately that it's fine to have a 30-day stay and to come back.

We will adamantly oppose an attempt by the debtor to appoint some examiner to delay this claim, which we believe is the most important issue. It's not a side issue;

it's the most important issue. Needs to be brought. Needs to be brought promptly.

So that's going to be our position.

But we are perfectly willing -- we're not trying to have a competing race to judgment among creditors. We believe there ought to be a consolidated action. Our only goal is to allow the Committee sufficient time over the next 30 days to determine exactly how procedurally they want to go forward, because there may be procedural reasons they choose to intervene our action as opposed to filing an independent action. They may want to be here. The Court may want to have it here. All of that is perfectly fine once there's an opportunity to have that determination made.

So ultimately I don't think today is the day for the battle about where and how this should go forward. But we don't think the Court, and we'd implore the Court not to enter an order that prohibits further actions in California should the Committee decide that's ultimately what they want to seek leave from the Court to do.

Thank you, your Honor.

THE COURT: All right. Thank you.

MR. SULLIVAN: Good morning, your Honor. Bill Sullivan from Elzufon Austin, on behalf of Paul Price and the Zonolite litigation plaintiffs.

My office filed motions pro hac vice for Robert

Fishman and Robert Sobol Tuesday. I would request that they be admitted so they can address the Court.

THE COURT: Thank you. Your application will be granted. Welcome.

MR. SOBOL: Good morning, your Honor. Thomas Sobol of Lieff, Cabraser, Hiemann & Bernstein.

MR. FISHMAN: Robert Fishman of Shaw, Gussis, Domanskis, Fishman and Glantz in Chicago.

MR. SOBOL: Your Honor, I believe that Mr. Bernick addressed two issues. Let me first address the issue with respect to the injunction. Our opposition was in a limited opposition with respect to the injunction. The injunction would have enjoined the Price plaintiffs from litigating the MDL case against Sealed Air on the merits in addition to litigating an issue with respect to the fraudulent conveyance.

Because we did not want this Court to be issuing an injunction without recognizing that there are additional issues vis-a-vis the MDL and the potential likelihood or possibility of litigating on the merits issues in the MDL, we filed the objection. The specific request, then, that we would ask be taken care of vis-a-vis the injunction is simply that the injunction only go so far as not to enjoin the parties from litigating cases that have -- that are the subject of any order that this Court may enter with respect

to relief from the automatic stay.

If this Court were to issue the relief we've requested vis-a-vis the automatic stay, then, by the same token, the injunction, if you will, is lifted as to Sealed Air and the issues that have been within the scope of the automatic stay, those issues that have been lifted vis-a-vis the automatic stay would similarly be listed vis-a-vis Sealed Air.

Sealed Air does have the right to defend the Zonolite case in Boston on the merits, if that case is going forward, and we would not want there to be some kind of technical glitch there. That's the limited nature of our objection vis-a-vis the injunction.

Now, Mr. Bernick for Grace has, in essence, argued the merits of the automatic stay. I guess I ask the Court right now whether you'd like us to address those arguments now or wait until later on in the agenda, where you have Item No. 13, the automatic stay issue.

THE COURT: Why don't you address it now.

MR. SOBOL: Okay. And I also note there was something about time limitations. I want to make sure I don't take too much of the Court's time. I'm not trying to --

THE COURT: Each side was allowed, in addition, to present 30 minutes total, with the understanding that we

read the papers that were presented. It's an opportunity to focus on what you might want to focus on or to respond in some way in greater detail to what the other side said.

MR. SOBOL: Sure. 30 minutes is not going to be necessary, I don't think, unless my brother takes up --

THE COURT: No. That's the total for everybody.

MR. SOBOL: Right. I understand that.

I think it's important to have a very brief background regarding the facts and the prior proceedings in order to be able to hit the really germane and practical issues, which are, first, whether the class certification issue, Judge Zaras should be permitted to conclude the process that was under way vis-a-vis that.

Second, also to address the practical question vis-a-vis the discovery issue that we've raised.

And because my points with respect to both of those rely somewhat and my response to Mr. Bernick relies on a couple background facts, I would like to simply outline those.

For a couple of decades or more, W.R. Grace, on its own, manufactured and distributed throughout this country Zonolite attic insulation, a loose fill attic insulation, which turns out can, and frequently does, under certain circumstances, release fibers when disturbed that are -- exceed appropriate thresholds.

That loose fill attic insulation exists all throughout this country in likely tens of thousands, if not hundreds of thousands, of homes.

Attic insulation became the subject of litigation recently, in the past year or a couple of years, has been the subject of extensive proceedings in the State of Washington and a small handful of other class action cases.

In the Barbanti case, which is now a statewide Washington case, has been certified by the Washington State Court Judge, and residents in the State of Washington, people who have Zonolite attic insulation in their homes, many be receiving notice crafted by the parties and the Court regarding what Zonolite attic insulation is, what it looks like, the potential hazards that it may or may not have and the existence of the class action case.

This kind of litigation is markedly different than the kind of bodily injury or traditional property damage cases that have been litigated throughout this country and have been the subject of cases that have made their way to the Supreme Court, that have had a lot of litigation. Zonolite is markedly different. It's not only a property damage case, it's a case that's largely equitable in nature. It tries to educate people not merely by notice to proposed class members, but also seeks to afford equitable relief in the form of creating funds by which a fund can further

educate people regarding the damage that may or may not be caused by this, to help, and also to create funds that if people do have to disturb or shore up their attics so that this loose attic insulation does not get disturbed, that those funds can be available.

This case, the MDL, was the product of the usual judicial panel, and W.R. Grace strenuously made the pitch that the best plays for the rights for this claim to be fashioned, the adversarial process, for us to figure out whether or not this is an important issue for Americans, that W.R. Grace manufactured and distributed to households throughout this country this potentially dangerous product, and how this society, and the responsibilities that W.R. Grace will have with respect to that problem, is an issue that should be adjudicated in a Court.

And W.R. Grace and certain parties may be -- took the view that it should be consolidated for efficiency purposes in the District of Massachusetts before an MDL judge there, where that occurred.

And for the past several months, we've banged out a CMO in which Judge Zaras plans to try the case, if it needs to be tried, next year, in June, and she set a schedule of events, including a Daubert hearing that she would have and summary judgment issues that she would address toward the end of this year and early next year, that fashioned and deal

with this issue.

Knowing that Judge Zaras was going to have a hearing about a week ago, and this April W.R. Grace filed this bankruptcy petition in early April. And they make no bones about what the purpose, from their point of view, that this bankruptcy is. They don't ever want there to be a class certification process because, from W.R. Grace's point of view, it is litigants and lawyers that create the problems, not W.R. Grace.

And Mr. Bernick has made no bones about it: That if there is ever a class certification process, it would, he says, create litigation.

Well, I would suggest that it's not litigants who are creating the litigation and the problems. It's obviously W.R. Grace and its distribution of the product over the years. And then the question is: How is society is going to address it?

Very simply, then, there are two practical issues and one nonissue. I've heard from Mr. Bernick, and apparently there's some suggestion in the papers somewhere which frankly has escaped me. There may be some feud as to who the lawyers are that are going to litigate this claim and that kind of thing.

I will tell you I know of no issues with respect to leadership whatsoever. There's a leadership structure in

place endorsed by Judge Zaras up in Boston. In this court, there are Creditors Committees in which Barbanti is a Zonolite plaintiff, is a member of the Property Damage Committee, and in Price is a creditor who presumably and realistically is represented through that Committee. There are *no* issues regarding leadership, at least that I'm personally aware of. There are, however, two immediate issues that we do think are appropriate.

First, to have class certification heard before Judge Zaras. It's a discrete issue. It's an issue that has been briefed. It's ready to go. It's where W.R. Grace and the parties thought was the best place to address this issue. And it is -- you've read the balance of the papers, so I think that it's well within the case law.

There's nothing in the case law that says asbestos is an exception and we never grant relief from the automatic stay. It's an asbestos case, which is essentially W.R. Grace's view. It's not what the law says. The law says differently, and we've made -- we've stated to this Court what the law is.

I will also say this, your Honor: As a practical matter, there will be a need to recognize what Grace wants to do here. What Grace would like to do in this bankruptcy process is curtail the process of realistic education for American citizens regarding the existence of this problem.

And it would like to in some way not have class certification go forward somewhere, whether it's in Boston or here, truncate the notice process to the extent that it can, within certain marginal limitations, try to have a discrete number of individuals who may have some particular heightened awareness of Zonolite problems fall through the cracks and in some way address that handful of people. Terminate the bankruptcy and leave behind for society and for people the problem of Zonolite attic insulation.

We don't think that's an appropriate way to go.

Finally, as to what has gone on in the MDL, there has been a considerable amount, although, to be sure, it hasn't been pending there for a long period of time. The Court has heard the parties, does have a schedule of events in terms of how to fashion and address this issue. There has been an enormous amount of discovery undertaken within a very short period of time, including a dozen or more lawyers who have done discovery.

So having said all of that, I just think that we would rest on the brief and what my brother, Mr. Fishman, has to say.

THE COURT: Thank you.

MR. FISHMAN: Your Honor, I have very limited comments.

I think it has been interesting for me to listen

to the debtor advise the Court about what the playing field is supposed to look like, what order things are supposed to happen in, and who gets to decide the order in which they happen.

Your Honor, I'm a very experienced Chapter 11 lawyer. I know that it's always the debtors' job to try to organize the case in a manner that most suits the debtors' goals. However, that's not the Court's job, and the parties are not bound by the' debtors vision of the case.

The most compelling issue before the Court with respect to the Zonolite claimants, your Honor, is not what relief they're going to be entitled to. It's not how much money they are going to get or when they are going to get it or how they're going to get it. It's who are they, because these claimants don't know they have claims.

And the claims bar date process with a typical mailed notice to known claimants and a published notice in the Wall Street Journal and wherever else the parties might contemplate publishing a notice is not going to reach the claimants. They're not going to know that they even need to come forward.

I consider myself to be a relatively knowledgeable person, aware of what's going on in the world around me, and I don't think I ever even heard of Zonolite until approximately three months -- excuse me -- three weeks

ago. I don't know if I have Zonolite in my attic, and after what I read in these papers, I'm not particularly inclined to go up there and look.

One of the big issues that we have here, your Honor, is we have to design a system that is certain that it does not disenfranchise these people from participating in this case.

The debtor has suggested that the merits of these claims are not high, and that in the end, they'll prevail, and they won't be required to pay anyone any money. That may or may not be true. I really don't know if that's going to be true.

But the most important thing that this pro has to ensure is that all of these people become aware this potential claim that they have, have a meaningful opportunity to appear before the Court, whether it's this Court or the Court in Boston, or a Court somewhere else, present their claim, and have it adjudicated.

And the process that the debtor has outlined and the one that the debtor hopes it can persuade this Court to follow is one which I believe, your Honor, is designed to prevent exactly that from happening.

We think that the essential ingredient for making sure that these claimants have a meaningful opportunity to participate in this case is for the class certification to be

allowed to go forward so that, hopefully, assuming that, from our standpoint, that a class certification effort is successful, that one person can stand before this Court, speak for these claimants and act for these claimants so that their potential claims are not left behind because they don't even know they have them.

We think, your Honor, that's the essence of the cause for lifting the stay, to allow the certification to go forward, and we are not asking today for this Court to let the merits of this claim be decided in Boston. We may or may not come back in the future and ask for that. But we're not asking for it today. We do think that the Court in Boston is poised to act. We think that it would be a waste of the resources of the parties and the Court to start all over again here.

And if your Honor was not inclined to allow class certification to go forward in Boston, we would immediately bring that issue before your Honor and ask your Honor to deal with it.

So in our view, someone is going to deal with this issue at some time, and it makes sense for us, for the Court that was in the middle of dealing with it, to continue dealing with it instead of starting all over again here.

Your Honor, those are my comments. Thank you.

THE COURT: All right. Thank you.

Does anyone else want to be heard in opposition?

MR. BAENA: May it please the Court, Scott Baena on behalf of the Official Property Damage Claimants Committee.

Good morning, your Honor. I will try to make it brief and not be repetitious.

We, obviously, are opposed to the debtors' motion. We've objected to it. We have apparently, however, reached some common ground. There appears to be no disagreement any longer that this litigation ought to be consolidated. There appears to be common ground that the litigation against Sealed Air and Fresnias is a claim of this estate. And despite the presentation of the Official Trade and Bank Committee counsel, this litigation, in fact, will be a centerpiece for some time, I suspect, of this bankruptcy proceeding.

So the real question, I think, that emerges, and as I think the Court has already perceived, is where this litigation will be prosecuted and by whom.

Let me start with by whom. The notion of a special prosecutor or an examiner is, we think, respectfully, your Honor, just another device or attempt to disenfranchise the real parties in interest in this litigation. Indeed, as described by counsel for the debtors just a few moments ago, he has presented a virtually

unworkable mechanism for the appointment and for the process of a special prosecutor.

It puts the Court in an untenable position of conceivably being the trial court as well as the body that is with authority to supervise the special prosecutor in determining whether or not to bring an action, which we think is irrefutably an action that needs to be brought by this estate.

The point is we think irrefutable that the existing litigants and the Committees are not only the appropriate parties, but the parties most capable of prosecuting this action.

And if it is appropriate to rule upon that today, we would urge the Court to disenfranchise the debtor, in essence, from making any determinations about how and when this litigation will be brought in the face of its positions, which are wholly inconsistent with the notion of even bringing this litigation, as they have already conceded to their credit.

With respect to the argument of Sealed Air, that notwithstanding the debtors' agreement with the Property Damage Committee that future suits ought not be enjoined by this Court at this point in time, Sealed Air, of course, says you ought to do so.

The fact that the debtor has agreed with the

Property Damage Committee that you ought not and cannot at this juncture, preliminarily or otherwise, enjoin future litigation underlines any basis whatsoever for Sealed Air to come in here and argue otherwise, because the only conceivable and legitimate basis for extending, in effect, the automatic stay or other injunctive relief akin to the automatic stay is the effect it would have on the reorganization of this debtor.

If the debtor has come to the conclusion that that litigation can be filed and will address it at a later time without affecting its ability to reorganize, it's virtually a legal impossibility for Sealed Air to take a different position.

Finally, your Honor, if I may comment on the Price limited objection to the relief sought by the debtor, as I understand it, Price is merely seeking to ensure that it preserves its right at the appropriate time, maybe today, to obtain relief from the automatic stay to do just two things: The first is to seek class certification and the second is to conduct discovery in connection with that certified class.

Your Honor, to provide a different bankruptcy perspective and propriety and the appropriateness of granting Price that limited relief, I think we ought remember that the bankruptcy purpose of class certification is to enable a

class claim to be filed in this case.

The debtor has made it clear from the outset of this case, through it's informational brief, through its comments to this Court, that it is going to attempt to prevail upon this Court to create a series of bar dates. In the case of Zonolite attic insulation, a separate bar date. They ambiguously refer to whether or not it will be before or after other bar dates, but the point is they're going to seek a special bar date with respect to Zonolite attic insulation.

If class certification does not occur, there are tens of thousands, if not hundreds of thousands, of class members, as we have already heard, who will have no opportunity, let alone knowledge of the existence of that bar date and the ability to comply with that bar date.

I think that the whole tactical intent of the debtor is to accomplish just that: To eliminate those hundreds of thousands of claims through a procedural device of shortening in the first instance the bar date and, secondly, prohibiting anybody from certifying the class.

We think that that undermines the legitimate claims and interests of persons within the constituency of the Property Damage Committee, and that the Court would not allow that to occur.

Thank you, your Honor.

THE COURT: All right. Thank you.

MR. ZALESKI: Good morning, your Honor. Matthew Zaleski, Ashby & Geddes, on behalf of the Asbestos Injury Personal Claimants Committee. I'd like to introduce to the Court and move the admission pro hac vice of Peter Lockwood of the Caplin & Drysdale firm.

THE COURT: Thank you. Your application is granted.

MR. LOCKWOOD: The Bodily Injury Committee, your Honor, I guess we're winding up. We've consolidated two agenda items here, if I understand the argument. One is the injunction and the other is the lift/stay in the Price case.

With respect to the injunction, the Bodily Injury Committee's of the matter is that the only appropriate solution at this point that would allow, on one hand, preservation of the status quo and on the other hand, the various parties that you've heard from today, many, if not all of whom, have divergent views about how the fraudulent conveyance action should proceed, a reasonable opportunity to see if there could be some sort of agreement on that subject and, if not, at least an orderly presentation of the different proposed solutions.

Certainly, the Bodily Injury Committee disagrees

strenuously with the debtor, that the fraudulent conveyance claims are side issues. We agree with the Property Damage Committee that they are, indeed, central issues. Even using the debtors' own financial information that's in its information brief and its previously filed SEC documents, the amount of the assets and the value of the assets of the debtor conveyed away in 1996 and 1998 dwarf the value of the assets remaining.

The Bodily Injury Committee is confident that the value of the assets remaining are also dwarfed by, at a minimum, the asbestos personal injury claims.

Certainly, there are a lot of property damage claims, particularly the Zonolite attic insulation claims, that are going to have to be addressed as well. Certainly as alleged, they also dwarf it.

And we believe that, sooner or later, there is going to have to be a decision to go forward with these fraudulent conveyance claims unless, for some reason presently unknown to us, everybody should decide that they're not worth pursuing.

We also agree with the Property Damage Committee and with Mr. LeClair, that the idea of appointing some sort of neutral third party to process these claims is nothing but a desperate effort to try and get somebody in here that the debtor could lobby to attempt to convince that it wasn't in

the interests of the estate.

The estate has three official representatives: The three Committees. And that's -- and this proposed representative wouldn't have a client. I mean, normally, when lawyers make decisions about whether to pursue litigation costs, benefit analysis and the like, they discuss it with a client.

Mr. Bernick has conceded that his client, the debtor, is disabled. He apparently envisages the Committees as inappropriate clients. So I guess that means he doesn't mind making your Honor the client, because I don't know who else this professional would discuss the merits of the litigation with, and that is wholly inappropriate on its face.

The idea of an examiner is the examiner would not solve anything, because the examiner, under the powers of the Bankruptcy Code, does not have the power to institute litigation on behalf of anybody. And there are plenty of people around that are willing, ready and able to examine the merits of this litigation.

So we think that the interested parties should get together and try and see if they can resolve this issue. And we would consent, just by their opposition in principle, to this injunction, to a continuation of the injunction for 30 days, to enable them to do that.

It is possible, as Mr. Kruger has pointed out, that 30 days might not prove to be enough. I hope it will. If it isn't, we could certainly come back to your Honor and suggest another extension. I know that there have been a number of instances, Pittsburgh-Corning, for one, that were involved where consent injunctions have been extended for periods while people have attempted to work matters out, and I don't see any reason why that would be unacceptable in this case.

The Price motion, it seems to me there are two aspects of it that I think first require some clarification.

As I understand the Price case, it involves both a class action on the merits against the debtor and others for -- with respect to the Zonolite attic insulation product. It also involves a fraudulent conveyance claim against Sealed Air.

With respect to the second aspect of Price, I'm not sure -- I don't think that the lift/stay has requested that the fraudulent conveyance part be permitted to go forward as part of the certification/discovery request. But if it does, we would oppose that. We think that the -- that fraudulent conveyance piece of that litigation should be treated just like the Abner case and any of the other cases that might be out there raising that type of claim would be

subject to the 30-day stay.

With respect to the other part of the lift/stay, the class certification in particular, our view in the matter, frankly, is that although we don't have a position on the merits for certification at this moment, we do have a position about who ought to decide it. And that is, we think it ought to be decided by your Honor. And the primary reason for that, frankly, is that, as has been pointed out, there's going to be an interplay here between the proof of claim bar date procedure set up by the bankruptcy rules and the notion of doing anything on a class basis.

This case appears, and, again, this has been done on such a rush basis that nobody, I think, other than the authors of the pleadings themselves fully understand all the ramifications. But this case appears to be seeking a non-opt-out mandatory class certification in which they would seek both notification to warn of the perceived dangers of Zonolite and some form of damages.

Respectfully, I think there's a big difference in a bankruptcy context between the possibility of under Rule 7023, for example, permitting class certification on a notification program, if the Court determines that such is needed, versus a single class claim in some mega-hundred million, billion dollar amount for some. As their information brief suggests, a million householdres who want

nine to $10,000 apiece to remove the attic insulation from their attic.

While it's conceivable that, at the end of the day, that might be the outcome of any class treatment of that litigation, we're not prepared to say that that sort of a decision with respect to the certification issue should be made by a non-bankruptcy judge in Massachusetts, who isn't going to be asked to take into account the limited funds available to pay all creditors in deciding what types of certification will or will not be permitted with respect to the damage elements of that litigation.

So we would suggest that the -- that the Price plaintiffs be permitted to, in the ordinary course, present their case here in this Court, move for class certification, everybody participate with respect to the bankruptcy aspects of that, and move forward in that regard.

Thank you, your Honor.

THE COURT: Thank you. All right. You have about two minutes.

MR. BERNICK: That's all I would like, your Honor.

First, to clarify, I made reference to Special Examiner and I'm informed by my learned counsel that we're really -- that has special meaning under the code, potentially. What I'm really talking about is the debtor

retaining special counsel so that the client would be the debtor if the claim is pursued, and this is what we would like a little bit more time to think about. And we would be talking about a special counsel to the debtor, but it would be counsel that is, in the sense, reportable to the Court, including for the preliminary determination about the merits of the claim itself. That's what we are looking for, is accountability to the Court, that the claim is worth pursuing, so it does not simply become a tool in the bankruptcy. There's really a candid, up-front assessment of merits to the claim.

Number two, the argument that has taken place about the Price claim in particular demonstrates that the issue in the minds of the people who are pursuing this matter today is not simply who is in control of that litigation. All the points made were substantive points: Should there be special notice? Is the bar date adequate?

I would agree with Mr. Lockwood: Those are matters that ought to be decided in this proceeding. Those are matters that pertain to how the case is actually pursued. They should not be decided by a judge who's not intimately involved in this case. This is not simply a question of who represents these people; it's a question of notice and participation. Those are substantive and procedural matters. We don't need to start all over, but the

matters should be placed before your Honor.

Finally, with regard to the futures, I hasten to add it is whether the injunction ought to extend to the claims. It is not property damage claims. The concern there is all of these personal injury claims that seem to keep on coming through the process and apparently are still coming through with respect to Sealed Air. Those are personally claims. They're not even the constituency that Mr. Baena represents. That's where the concern lies: That people will continue to pursue those future claims notwithstanding the order that your Honor has issued.

So there is some merit to what Sealed Air has to say on the personal injury claim side.

THE COURT: All right. Thank you.

Okay. With regard to this application for preliminary injunction, I am going to enter an order. And the order essentially is the order submitted by the debtor.

What I am going to order is that the prosecution of all actions are stayed and enjoined pending a final judgment in this adversary proceeding or further order of the Court, and also that the preliminary injunction does not apply to pending motions for transfer and the two cases cited in the proposed order, and that further provide that nothing in the order will prevent anyone from

providing notice to insurance carriers or other appropriate persons or entities that would otherwise exercise their rights under the insurance policies provided they don't seek reimbursement or payment under the policies without order of the Court.

This order, by implication and expressly, will overrule any objections and deny any competing applications.

It is to be understood when the order is entered with the findings that will accompany it that the order in no way addresses any other matter.

For instance, it does not address the issue of whether or not class certification will be undertaken or -- whether it is undertaken or not, whether it will be done here or in Massachusetts. It implies nothing about the California litigation. What it simply does is enjoin, so that the Court and the interested parties can move forward to get the litigation that accompanies this bankruptcy in some sort of order.

All right. I see the Trustee has arrived.

MR. CHEHI: Your Honor, Mark Chehi for Sealed Air.

Just one quick question: Does the scope of the injunction then extend to the future filed or future --

THE COURT: Does not extend to future

litigation. I am going to make a finding in the findings section of the order at this time that it only pertains to filed cases and/or pending cases, but doesn't foreclose the consideration of whether cases that may be filed or contemplated be filed should be enjoined in the future.

MR. CHEHI: So it's without prejudice to the debtor or --

THE COURT: Or any other party.

MR. CHEHI: Thank you, your Honor.

MR. SPRAYREGEN: Your Honor, the U.S. Trustee has arrived, but we would actually like to come back to that Item 6 after we move forward. Hopefully, we'll try to find a way to resolve that before we get back to it.

THE COURT: All right.

MR. SPRAYREGEN: We would then be prepared to move on to Item 10 on the agenda letter, which is the debtors' emergency motion for interim and final orders for DIP financing.

Your Honor, there were, in the course of events of this DIP, we originally had asked at the interim hearing on the first day of the case before Judge Newsome for a hundred million dollar interim DIP. We thought it would go out about 30 days. We ended up with $50 million interim for 15 days. We ended up back before your Honor on April 18 and extended that out to today at $100 million, a second interim

order.

In the interim there was an April 25 new objection deadline established to the final DIP. There were two objections received, one of which we resolved. One of the objections was by the Official Committee of Property Damage Claimants, in essence having some concerns about making sure that they receive notice of things and concern about what priorities would be in the event of Chapter 7. We've made some changes to which I understand they've agreed to the proposed final order, and that would resolve their objection.

So that would leave the objection of Credit Lyonnais, your Honor, and we have had a number of conversations with them in an attempt to resolve that unsuccessfully. I'm not sure what's left of their objection.

THE COURT: Let's hear the objection.

MR. SPRAYREGEN: Thank you.

THE COURT: Thank you.

MR. MONACO: Good morning, your Honor. Frank Monaco for Credit Lyonnais. I'd like to introduce and move the admission of my co-counsel of Jeffrey Glatzer. He's admitted in good standing in the Bar of New York and practices in the Southern District of New York in Federal Court.

THE COURT: Thank you. I will grant the application. Welcome.

MR. GLATZER: Thank you, your Honor.

Your Honor, we represent Credit Lyonnais, which is a prepetition creditor of the debtor under bank facilities, which aggregate at about $500 million. They were in one of the $250 million facilities, and there were about $10.4 million.

When we saw the application for DIP financing, we read it as everybody else did and discovered not in an application, but in the agreement that there was provision for permitted acquisitions.

That came on the heels of discussions prepetition that the lenders were having with the debtor with regard to a facility of about $200 million that never got consummated because of the filing of the petitions, during which time the debtors were talking about conducting and taking acquisitions in Europe mostly in the near future, this year and next year, I think, to the tune of two or $300 million. It was on their radar screen.

When we discovered the -- that they were intending or retaining the right to make application to the Court in the future for permitted acquisitions, we wanted to find out what they actually needed of a DIP financing, which would be a superpriorioty administrative expense, to, in our

view, preserve the estate apart from the acquisitions, because we did not understand how acquisitions fit into a DIP financing, which is ordinarily for the -- to preserve the estate and to run the business, not to engage in acquisitions.

We could not discover it from the motion papers and we, through informal discussions and correspondence with the debtors, have gotten some information. I think the debtors are prepared to show the Court some of that information today.

It appears that in their worst-case analysis in the next two years, they might need about $160 million of the DIP financing, and we understand that is for ordinary expenses that a DIP financing would be used for, for preserving the estate, running the business, and that there is, therefore, with the $250 million DIP, approximately $100 million or $90 million that we assume are potential -- potential for permitted acquisitions.

We just don't agree that that is an appropriate use of the DIP and that even allowing for a cushion from the $160 million that they have in their worst-case analysis of use of the DIP in the next year or so, that $200 million would be apparently -- should be adequate.

And if they -- and they criticize that or object to our discussion that they were -- that they were sort of

preordaining the use of the DIP for these uses despite the fact that they have to come back to the Court. But, in fact, if they have the financing already pre-approved in the DIP, they are setting up the structure for the use of the DIP for these long-term investments.

Coming from New York, you know, years ago New York got into a great deal of financial trouble by using short-term borrowings for long-term investments. This is the kind of thing that we think is -- has potential here.

Furthermore, the money and the acquisitions are going to be -- are going to be of nondebtor entities. They contemplate buying companies in Europe, and they have informed our client that in the European subsidiaries, which are nondebtors, there are about $100 million cash now and more expected in the future. None of this will become collateral to the estate directly. Maybe they would get some stock of some of these companies, but under a variety of rules the most they could get is a percentage of the stock, and the stock gives you a net worth of a value of company, but not the hard assets.

So all of this would be layered on the debtor despite the fact that the assets would be outside of the estate. And there appear to be assets outside of the estate at which they could use for these purposes.

So, therefore, we think that either the DIP is

too large, $250 million, because it's based upon the permitted -- the contemplation of permitted acquisitions, or they just shouldn't go ahead with the acquisitions. That's our objection.

THE COURT: All right. Thank you.

MR. SPRAYREGEN: Your Honor, we did file a response, a written response to the objection, and an affidavit from our Chief Financial Officer, Mr. Robert Torolla.

I'm not sure how the Court exactly wants to proceed. We do have him in court today, ready to testify as to what was in the affidavit and any other matters. We also have Miss --

THE COURT: You can just argue the affidavit.

MR. SPRAYREGEN: We can do that, your Honor.

THE COURT: And your position.

MR. SPRAYREGEN: Your Honor, in essence, the Credit Lyonnais, which is about two percent of the prepetition unsecured facility, is questioning the business judgment of the debtors in the DIP loan that the debtors obtained.

We laid out in very much detail the efforts the debtors went to to obtain the DIP loan prior to the filing of these Chapter 11 cases. This DIP was actually very heavily shopped among a number of financial institutions and, as a

result, priced quite favorably to the debtors.

In addition, the DIP has provisions in it that permit these debtors which come into these cases in an unusual position as compared to most debtors that we see in bankruptcy cases. That is, very strong operating company throwing off large amounts of cash in certain circumstances.

And because these are stronger operating companies than we ordinarily would see, we negotiated a different DIP. That by no measure, though, takes away from the fact that without one acquisition ever being done, and the counsel is correct, we could never do anything like that without coming before the Court, in any event, with all parties here having an opportunity to object and have a position on it. But without one acquisition being done, we would be asking for the same size DIP. That is the $250 million.

The business judgment of the debtors is that even accepting the facts that the objectors lay out, that is that under sort of a reasonable worst case, the DIP within two years would go up to $180 million, to have that amount of room under a DIP we think is entirely reasonable. And, in fact, it would be irresponsible of the debtors to put this company in a position where we literally have used every available penny of credit, because what happens, and this is

laid out in the affidavit in our objection, creditors well understand the debtors' financing situation.

And they are not looking at the fact that we -- what will happen in two years when they are dealing with us. They're looking at how we are today. And if they are seeing that it is very skinny, that is, we may not have sufficient financing to bring us through these proceedings, it fundamentally alters the way that they do business with us and alters our cost of doing business with them or even doing business with them.

So the debtors' very strong business judgment is that this is a reasonable amount of money, the $250 million, and that it's necessary to preserve the assets and, hopefully, enhance the assets, ultimately, and that the idea that we should have just barely enough is really not the standard that DIP financing is subject to.

Number of practical points also. This is disclosed in the papers. This is a DIP that is underwritten by the DIP lender but will be syndicated to a number of parties. And in the syndication, all of those parties accept whatever the terms of the DIP are.

The idea that we should excise certain provisions of the DIP, like the provision permitting acquisitions and then come back some other time to deal with it is fundamentally impractical, because then the debtors would

have to be in a position to go out to a DIP that is now syndicated and ask the new Bankruptcy Court, which does not exist at the moment, to approve whatever this amendment will be at that point in time.

What that does again, I'm not sure the DIP lender could accomplish that, but it fundamentally again alters the debtors' flexibility in operating its business, and if there are opportunities to enhance the value of the assets, again, subject to coming on a motion before this Court with all parties to be heard on it, the debtors would be in a position with this DIP to act on those opportunities, again, without that flexibility in this current DIP and having to find financing at a later time. That is a completely different kind of situation in looking at how you are going to operate your business going forward.

We also note in the papers that the cost savings suggested by the suggestion that the DIP should be 50 or $100 million lower is really throwing the baby out with the bath water. That is, the cost of this DIP is about, I think it's three-eighths of a percent.

I'm looking for the number. I apologize. But it's very de minimis, and so we would be talking about saving the estates, if we cut the DIP by $100 million, a few hundred thousand dollars.

We would suggest that that would be a very bad

business decision for these debtors to save that small amount of money and the consequent negative impacts on its flexibility, not just with respect to potential acquisitions, but with respect to running the business.

As we state in the affidavit, the DIP now is already drawn up to about $75 million. And the debtors have -- do have an extreme need for that to continue and that availability to continue going forward.

So with that, your Honor, we would ask that the objection be overruled, and would note, and do think it's quite important, there are obviously a number of Official Committees in this case, and I do think it's important, the lack of objection of those parties and the reasonableness of the amount of the DIP and the, ultimately, the protection of the main thing that seems to be objected to by the objector, this acquisition issue, is really for another day. That is much speculation about buying something in Europe and whether it would be subject to control over the Court.

If we ever bring a motion, those are all issues that can be dealt with at that point in time, and it really is not only inappropriate, but almost impossible to deal with these hypotheticals at this point in time, and in our view don't need to be dealt with right now. We can deal with that when and if it ever occurs.

Thank you.

THE COURT: Thank you.

MR. RASKIN: Your Honor, Robert Raskin for the Official Creditors Committee.

We had several concerns with the DIP order that have been addressed by the debtor and the bank, and therefore we did not object to the application.

Your Honor, with regard to the permitted acquisition issue, we, of course, would prefer that that was excised from the DIP. That was not the debtors' business judgment. That was not the package that was before us.

Having said that, your Honor, not objecting to the DIP, with the preservation of all rights in the event the debtors do come back to this Court for authority to use that out in the DIP. And so we are just reserving all rights with regard to what permitted acquisitions are appropriate in the future. I don't think the debtor is doing anything here today to prejudice our rights. The permitted acquisition does say, "Subject to Bankruptcy Court approval."

THE COURT: All right.

MR. GLATZER: May I make one comment?

THE COURT: Sure.

MR. GLATZER: Thank you.

Just one response to Mr. Sprayregen. With regard to vendors' view of the company, based upon the magnitude of

the DIP, it seems to us it would be unlikely that the vendors would view the potential use of the DIP for permitted acquisitions and giving them comfort as to whether they're going to be supplying this company or not. We think a $50 million cushion from their worst-case analysis, which would leave a DIP of 200, would -- I understand the business judgment. I think it's the preservation of the estate under 503 of the Bankruptcy Code.

Also, on an issue of notice, what happens in these cases, generally, you know, a deal is cut and then, all of a sudden, you get ten days' notice that there's going to be a motion or a hearing to approve something, and getting information, including when the financing concept is preordained, and we think leaves it in a, you know, in an uneven playing field in terms of trying to address the issue at that time.

So if the Court is going to permit this, which we object to, we would hope that there would be some imprimatur that they must give 30 days notice of these acquisitions so people can have sufficient opportunity to review them, understand them, and then address them at that time.

Thank you.

THE COURT: All right. Thank you.

I'm going to overrule the objection, finding that the grounds of objection do not go to the standard applicable

to the granting of such an order in that it does not attack either the principle with regard to business judgment or that the funds are for the preservation and operation of the debtor.

What the objection does go to is the acquisition provision, which has not been implemented, and is subject to review by the Court, as the debtor understands. That provision in and of itself in the context of this bankruptcy I conclude does not meet the standard that would support an objection, and therefore I'm going to overrule it and enter the order as presented.

MR. SPRAYREGEN: Your Honor, we do have a proposed order that do take into account both the Creditor Committees and the Property Damage Committees suggestions.

THE COURT: And you will be mindful of the one point that was made that carries some merit, which is if you're about to engage in a large acquisition, that some sort of adequate notice so we don't have to come in in one day, and that they'd have time to look at the papers, would be appropriate. I don't know if it's 30 days. I don't know if it's five days. But it's some amount of time that permits a fair review of whatever the application is going to be.

MR. SPRAYREGEN: Your Honor, yes, we will

be quite mindful of that. Obviously, even just a short 365(d)(5) sale requires notice. We would do everything we can.

THE COURT: Thank you.

MR. SPRAYREGEN: Your Honor, that brings us to Item 11 on the agenda letter, which was the reclamation procedure motion.

Your Honor, there was one objection to that motion. That actually has been resolved really through informal communications, and there's no proposed change to the order that was attached to the motion, so that objection has been resolved, and we would ask that the order be entered.

THE COURT: All right. We'll do that.

MR. SPRAYREGEN: And I have extra orders here, if I can approach.

THE COURT: Sure.

(Mr. Sprayregen hands documents to the Court.)

MR. SPRAYREGEN: Next is Item 12, your Honor, which was the motion for reconsideration of the first-day order concerning the essential trade.

If the Court recalls, Judge Newsome had entered an order actually more expansive than the debtor had requested, authorizing the payment of all of the debtors' prepetition trade in the amount of about $35 million.

The debtors have requested essential trade capped at about four and a half million dollars.

The movants raise the issue of should that 35 million be reduced. I'm happy to say, your Honor, again, based on a number of informal discussions among the parties, we have resolved that issue, basically a point in between the four and a half million, actually a point far closer to the four and a half million than the 35 million. And it was basically, as I reported at the last hearing, we were unfortunately no longer able to live at the four million due to the changed circumstances.

Through discussion with the Creditors Committee, we did resolve this objection, and we have a proposed stipulation to present.

THE COURT: All right. Pass it up. I will approve it.

(Mr. Sprayregen hands documents to the Court.)

MR. BAENA: Your Honor, may we be advised of what the new number is?

THE COURT: You didn't get a copy of the proposed order?

MR. BAENA: No, sir. If I did, I was here, and --

THE COURT: We'll get it to you right now.

MR. BAENA: -- didn't see it.

THE COURT: No problem.

MR. RASKIN: Your Honor, I apologize to Mr. Baena. We have to work out our communications a little better. Some of the papers were not served us and we did not include them in these negotiations. We'll work out those issues outside the province of the Court.

The debtors had had previously paid $5.6 million. I will give round numbers. In addition to that amount, the stipulation called -- allows the debtor to spend an additional $4.9 million plus. To the extent they get any deposits back from any of their vendors, prepetition deposits back, they can expend those funds.

In addition to those amounts, your Honor, the stipulation authorizes the debtor to allow vendors to set off $8 million of prepetition deposits.

And that is the general thrust of the stipulation.

THE COURT: All right. Thank you.

MR. SPRAYREGEN: Your Honor, that gets to Item 13 on the agenda, but I believe the Court actually for today, at least, has dealt with that. That was the automatic stay motion.

THE COURT: Yes.

MR. SPRAYREGEN: So that would leave going back --

THE COURT: Just for the record, that application is denied.

MR. SPRAYREGEN: That would leave Item 3 on the agenda, which was the Ordinary Course Professional Objection of the U.S. Trustee.

I would ask Ms. Jones to report on that, because there have been some conversations on that while I was up here.

THE COURT: All right. Thank you.

MS. DAVIS JONES: Your Honor, if I may, I would back up a little further, and with respect to Matters 1, 2 and 4 and 5, your Honor, we do have the orders on that, if that is procedurally easier for the Court than going through the whole --

THE COURT: Sure.

MS. DAVIS JONES: -- certificate of no objection.

THE COURT: You can just pass them up.

MS. DAVIS JONES: Thank you (handing documents to the Court).

Your Honor, then as to matter No. 6, with the ordinary course professionals, this had drawn an objection from the U.S. Trustee, and we have spoken with Mr. Perch to try to resolve those, and there are four commitments that we have agreed to make, and I will make them known on the

record.

First of all, we will be providing additional information to the U.S. Trustee as to what particular professionals will be retained to do particularly what they're doing. I'm going to provide that by the end of this month.

Your Honor, also we've committed that the ordinary course professionals that are on our current list will file an affidavit of disinterestedness within 30 days of that professional's start of providing services post-petition.

Also, your Honor, you may recall in the motion there's a provision to allow the debtors to add additional OCP's, as we call them, should that be necessary, as we go down the road. If we do that, we will also make sure that they file affidavits within 30 days of their start date of providing services post-petition.

And, your Honor, lastly, we will -- we do represent that we will not be using essential trade money to pay the OCB's.

Your Honor, I think with that, we've resolved the objections.

MR. PERCH: Good morning, your Honor. Frank Perch for the United States Trustee.

I appreciate the Court's indulgence in moving

this to the back of the agenda, and Ms. Jones is correct with those modifications and clarifications. And subject to those provisions being put in the order as necessary, the U.S. Trustee has no objection.

THE COURT: All right. Thank you, Mr. Perch.

MR. PERCH: Thank you, your Honor.

MS. DAVIS JONES: Your Honor, if I may approach?

THE COURT: Yes.

MS. DAVIS JONES: Your Honor, then, with respect to Matters 7 and 8, as the agenda indicates, there were no objections filed to those, but we do have a couple changes that we've made on proposed orders to be submitted to the Court.

Your Honor, with respect to the administrative compensation order, we have just added language to clarify on Page 5, the ordered paragraph that provides, "Ordered that each member of any Committee, when and if appointed, be permitted to submit statements of expenses and supporting vouchers to counsel to any such Committee."

We've added the proviso, "Including individual Committee member counsel expenses but excluding such counsel's fees."

Your Honor is quite aware of that issue from the First Merchants versus Bradford decision. This is the language that has been agreed to by the Trustee's Office,

that goes into all these orders to make clear that there is no surprise, if you will, and that somehow counsel fees are just being accumulated on a monthly basis and being paid at an 80/20 rate, and nobody really focuses on them.

This is to specifically provide if there are counsel to particular Committee members who are seeking reimbursement of fees, that they bring that on by particular application that gives the trustee and the debtors and other interested parties the opportunity to respond to that.

Your Honor, the utilities motion also had a change in the proposed order that we would give to the Court. And that is to provide that if a utility company makes a timely additional insurance request that was provided in the motion that the debtor believes is reasonable, the debtor be entitled to reply with the additional insurance request without further order of the Court.

What we've added after giving notice to counsel, the Official Committee's intent to comply with additional request and allowing two business days after such notice has been given to permit counsel to the Creditors Committee to object to the debtors' compliance with such additional assurance request.

Your Honor, with those changes, both in that order and in the one I just discussed, I'd like to submit

them.

THE COURT: Sure.

(Ms. DAVIS Jones hands documents to the Court.)

MS. DAVIS JONES: Your Honor, I believe that's all we have on the agenda.

THE COURT: All right.

MR. SULLIVAN: Your Honor --

THE COURT: Yes?

MR. SULLIVAN: Excuse me, your Honor. Bill Sullivan on behalf of Paul Price.

Your Honor ruleD on the motion for relief from stay and also on the injunction, and I just rise for a point of clarification.

In issuing your injunction where you indicated that it did not decide whether you or the Massachusetts Court, whether this Court or the Massachusetts Court would decide the issue of class certification, and therefore can we get a clarification that the denial of the motion for relief from stay, which we felt was appropriate to bring today since we were considering the injunction, is without prejudice so that we can renew that issue and bring it before your Honor at the appropriate time as to where this class issue --

THE COURT: The only thing that happened here today was litigation was enjoined. Objections were overruled

and applications denied that were implicated by the decision to enjoin litigation.

Now, whatever that means, it means.

Lawyers always ask you, it's not without prejudice. Then you find out what they really meant when they present the application is something much broader.

It's pretty clear. We enjoined litigation today. The motion to lift was denied. And it's without any other decision or issue, a decision being made or issue being addressed.

But while we're on this -- so that's my answer to clarify. I don't do that well, so I stay away from it.

If I could, I have a pretrial conference I was going to take during the break. We're finished on the agenda for what we have today. And i don't want to hold these folks much longer. But if you could, since we were going to be here until 12:00 o'clock anyway, if the parties -- if counsel that have an interest and spoke with regard to the motion for preliminary injunction would stay, I'd like to hold -- it will be on the record, a brief conference with you when I'm finished with the pretrial conference, togive you some guidance going forward, that may help you in the 30 days while you're in discussions. All right?

Anything further?

MS. JONES: No, your Honor.

THE COURT: We'll be in recess.

(Court recessed at 9:45 a.m.)

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(Proceedings commenced in the jury room with the Court and counsel present beginning at 10:12 a.m.)

THE COURT: All right. And this is on the record, if anybody wants a copy of it.

You know, now we have an injunction in place about -- for about a month, and the bankruptcy, obviously, focuses on litigation. You know, judges really aren't suited, believe it or not, to strategize lawyer-managed litigation. I sit on panels and I know some judges talk about how well they do it, and I don't think we ever do it well. It's kind of like lawyers managing their office. You don't really do it well, even though you think you do. That's why you have office managers now and folks like that.

In this case, I'm more than ready to receive papers and make decisions that are required. But there is a line that crosses over into the idea of managing the case. And we've all been exposed to the orders that go into the multi-district litigation cases. And there's a book about that that I could go get in my library, and it has the forms, and I just have to fill in your case name and a few other things, and I could look like a judge that knows how to

manage a case to the uninitiated. But to people who really try cases, you would know that I got it from the form book that I got from Washington.

What I would really like to see you do, and the purpose of me having you in is, you are probably going to be litigating in Delaware. And I have not made any decisions, but it's a bankruptcy case, they're interwoven. Unless there's some persuasive, convincing force or reason to send you around the world, you are probably here. And what you really ought to focus on is what you want decided and when you want to get to trial. It will make a lot more sense in the context of not only the litigation that's out there, but of the bankruptcy also.

And if you worked at that, I am not going to disagree with anything, if it's an agreement, because I'm going to accept your preference. And what I am going to do is work to get you timely decisions and have enough lead time to be able to read the papers thoroughly and then get you and ask you questions.

That's what I wanted to tell you. And I think you'll spend your time more productively focused there than anywhere else.

Now, if you can't agree, and you think there's some strong force or convincing reason why you shouldn't be working on how you're going to get these cases resolved, you

can come tell me that and I have an open mind about it. But I thought it would be good if you knew what my perspective was, at least to get you started in your discussions.

And in the litigation, if it occurs in Delaware or if it goes somewhere else, we're still going to have to move it on a timely basis, and a lot -- and, you know, I don't like the term rocket docket, and we're not that. But we do try to move fairly expeditiously, so that people get results.

Typically in this court, cases of the nature you're talking about would realistically be out of here in 24 to 30 months. In other words, if they just came in, given the idea there would be some extended discovery and some motion practice, and they could be out as early as 16, 18 months. So you ought to focus on that, too, as you plan how you would conduct the cases.

MR. BAENA: Your Honor, is it inappropriate to inquire whether you have a perception you wish to share about the role of the Committees in these cases?

THE COURT: See, that's a substantive issue. That's something I should decide. I'm only talking about mechanics.

MR. BAENA: Right.

THE COURT: And that's the kind of thing I separate out that ought to be -- because I don't really have

a preference.

I actually read somewhere where they don't think I'm a plaintiff or defendants' lawyer, but they think my heart is with the plaintiff. I have no clue.

MR. RASKIN: We're going to stick around and see how you sentence these people.

THE COURT: I was a prosecutor, but I also was Assistant Public Defender for six years. I had three death penalty cases I tried and then I became a prosecutor and I had to prosecute death penalty. So I try to keep all of that out of it and just focus on making -- I just said that I'm making informed decisions and get you answers, so, no, I don't have a preference on that. But that's something you could work out. But I would be willing to decide it in the short run, so you would get answers to that so you would get on your way.

Somebody else said something when you brought that up. The folks from the Massachusetts case about -- I don't think they -- did they use the word disenfranchise?

MR. FISHMAN: I think I probably used that word, your Honor.

THE COURT: Was it you?

MR. FISHMAN: Yes.

THE COURT: This is Delaware.

MR. FISHMAN: I come from Chicago.

THE COURT: But feel -- you know, I'm wrong as much as I'm right, but everybody will get a shot at, you know, being open.

And the other thing I wanted to tell you was, time has become very important in this court, just because of the filings that are coming here. And when we put time frames on you, it's not really to cut you off, which is a form of disenfranchising litigants. You have to understand, we've read the papers and it's really a chance for you to enhance or for us to get something straight. We're not trying just to be arbitrary.

But there's really not a lot of time to be set aside, particularly with the trials we have to schedule.

So does anybody else have any questions? I will be happy to --

MR. BERNICK: The purpose of the informational brief was to lay out the elements we think we have to litigate, and we'll be really very diligent in raising issues in a formal way very soon to try to create what I understand your Honor would like, which is a structure of what's going to get litigated, what are the basic tracks of litigation and what is the process going to be for getting that to happen.

And we will -- we'll satisfy our burden to initiate those discussions. We'll do it obviously informally with the Committee in advance. But we'll put those matters

to your Honor very promptly in this case, so at least people will have something to shoot at and we can get the process under way.

MR. RASKIN: Just from a bankruptcy lawyer's perspective once again, that's great in the litigation. This is a bankruptcy case and I think we ought to spend some time, especially since we're talking about cases that are going to take a couple years to try. It's worth six months or a year to see what you can resolve consensually or you just have to start teeing up trial and spinning meters, and so that's where we're coming from.

THE COURT: Well, we have two weapons in our arsenal here in Delaware in the District Court. One is a firm trial date. Once we set it, it's unusual to go off it, unless there is some real purpose to doing it.

And the second is we have a Magistrate Judge that is excellent at mediating, and we have an open mind about bringing in outside mediators as long as the parties, you know, have the will to have a fair discussion toward reaching some sort of a consensual agreement.

And I am willing to insert the Magistrate Judge where it appears that parties have that kind of a will and want to talk to someone who's very good at that. She has a very detailed process she goes through. She is an experienced litigator. And she spends a lot of time with the

folks going back and forth, first trying to understand the position and then trying to get a recommendation or at least folks moving toward some goal.

So if you could do that, that's great, and I will be willing to work with you to get that done.

I don't think my job is to push settlement, to advocate settlement. My job is to make decisions and to get you to trial. I'm the screening mechanism for the Court of Appeals. And I'm good at that.

The good news is -- off the record.

(Discussion held off the record).

THE COURT: But what I'm going to work on is getting you to a trial, if you are going to be here. But we have resources available. And actually, we have some folks that are mediating both with Delaware backgrounds and from out of town now in some cases, and they've done an excellent job of parsing out some issues and getting some parts of cases voluntarily resolved. But you have to want to do it. If you don't, litigation is good. Bad for the client; right? Running that clock and all.

MR. SPRAYREGEN: Well, we've resolved a lot of these cases over the years by agreement. Certainly the majority of the cases that we've had have been resolved by agreement, and we're always interested in doing that, if we can.

THE COURT: Good.

MR. LOCKWOOD: From my Committee's perspective, I think in terms of expedition, the expediting the Zonolite dispute would be a very good thing, because that is really sort of -- it's unaccustomed representing the asbestos personal injury people to be the small monkey in the room and there's another bigger 800-pound gorilla around.

But the numbers that are being referred to in the Zonolite stuff make them into the potential at least 800-pound gorilla in this case, and yet the debtor asserts that they're about a two ounce gorilla.

MR. BERNICK: Peter, let me assure you, you're still the gorilla. Don't worry about it.

MR. LOCKWOOD: Maybe not the biggest gorilla.

THE COURT: At least you're not nasty toward each other. But, see, that's the kind of thing you might be able to agree in your discussions and come and say, If we can get that case on in X amount of time, we could do all that for you. Or you could say, We can't agree, but we think that's what should be put before the Judge for a decision, whether you get a 14-month trial date or 30-month trial date. I will make that decision. That's the kind of discussion I would hope you would have in the next 30 days.

If you can't resolve it, at least if you can join that that is the issue, I can give you an answer.

MR. LOCKWOOD: Mr. Bernick is very good at joining the issue, your Honor. You'll find he definitely will put it right out there for us all.

THE COURT: Does anybody else have anything?

MR. BERNICK: Thirty days from now, do you want us back to basically report on what we've come up with along those lines?

THE COURT: Somewhere in the range of 30 to 45 days I thought you would get back and tell me where you are, because I do want to keep it moving. It's not on the front burner but it hasn't reached the back burner. And I don't feel comfortable in cases until there's a course. And we really don't have a course here. We kind of have a lot of sentiment, a lot of ideas, a lot of thought, but we don't have a real course.

And whether it's part of the case or all of the case, I want to get it on a course, you know, wherever it is or whatever has to be resolved. That's what we're supposed to do. That's the job we're supposed to get done, so -- all right.

Anybody else? Thank you very much. I appreciate it.

(Conference concluded at 10:25 a.m.)

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